Supreme Court, U.S.
FILED

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No.

Lexis

In the

Supreme Court of the United States

DAN RODNEY JOOS,

Petitioner

v.

PIPER C. JOOS (MONTE),

Respondent

On Petition for Writ of Certiorari
To the Utah Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Domestic relations adversarial disputes are a national disgrace. They cause irreparable harm to marriage, families and children. The family is the fundamental unit of society. The U.S. Supreme Court has failed to establish and protect the constitutional and fundamental right of every child to be raised and have a meaningful relationship with each biological parent. As a result, state courts are destroying the institution of marriage.

1. In light of *Troxel v. Granville,* 530 U.S. 57 (2000), whether the Utah Court of Appeals committed constitutional error by giving the domestic relations judges unbridled discretion without being required to give weight to child-rearing decisions made by fit parents.

2. Whether unbridled discretion ("no hint of limitation" *Shinkoskey v. Shinkoskey*, 19P.3d 1005 (2001), together with the Utah Appellate Courts' "abuse of discretion" standard of review, denies parents their due process by denying the right to a meaningful appeal.

3. Does the First Amendment's right "to petition the government for a redress of grievances" protect Petitioner's right to challenge the Court of Appeals failure to apply *Troxel*?

4. Is it an unconstitutional chilling effect on exercise of First Amendment rights for the state court to impose sanctions upon Petitioner for filing a declaratory

judgment lawsuit asking the court to declare the effect of *Troxel* on Utah laws?

5. *Shinkoskey* supra is typical of Utah and other states judicial policy of requiring parents to adversaries, ruling in favor of the mother and pushing fathers out of meaningful relationships with their children. Are not state laws that sweep fathers out of the lives of their children unconstitutional?

6. Whether the Utah Court of Appeals decision violates Petitioner's First Amendment religion rights by failing to protect Petitioner's religious beliefs. Before the state judge, opposing counsel challenged and ridiculed Petitioner's religious beliefs (**"I dispute** his claim that his religion forbids him from being adversary to his wife...."). At oral argument, the Utah Court of Appeals questioned Petitioner's religious beliefs.

7. Whether the Utah Court of Appeals failure to afford Petitioner an effective remedy as to the issues raised, violated his rights under international common law, specifically Articles 8,10,12,16,and 17 of the Universal Declaration of Human Rights.

The caption of the case in this Court contains the names of all parties to the proceedings in the Utah Court of Appeals.

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OPINIONS BELOW

The opinion of the Third Judicial District Court of Salt Lake County, State of Utah dismissing the lawsuit has not been officially reported. The opinion of the Utah Court of Appeals is not officially reported, being a memorandum decision designated "not for official publication" dated June 12, 2003, case No 20011005-CA and is reprinted in the separate Appendix, pages 1-4. The decision of the Utah Supreme Court denying petition for writ of certiorari has not been officially reported and is reprinted in the separate Appendix, pages 4-5.

STATEMENT OF JURISDICTION

The judgment of the Utah Court of Appeals was entered June 12, 2003. The decision of the Utah Supreme Court denying discretionary review was entered September 23, 2003. (See separate Appendix, pages 1-5)

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

The constitutionality of Title 30, Utah Code Annotated 1953, as amended is in question. 28 U.S.C. § 2403(b) may apply and shall be served on the Attorney General of Utah.

CONSTITUTIONAL PROVISIONS
CONSTITUTION OF THE UNITED STATES

Amendment I - Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

AMENDMENT XIV - Section 1.... No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES

UTAH CODE ANNOTATED 1953

Title 30 and 78 provisions are lengthy and are set out in the separate appendix.

DECLARATORY JUDGMENTS
Chapter 33

78-33-1. Jurisdiction of district courts --Form --Effect.

The district courts within their respective jurisdictions **shall have power to declare rights**, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declaration shall have the force and effect of a final judgment or decree. (Emphasis added)

78-33-2. Rights, status, legal relations under instruments or statutes may be determined.

Any person interested under a deed, will or written contract, or **whose rights, status or other legal relations are affected by a statute,** municipal ordinance, contract or franchise, **may have determined any question of construction or validity arising under the** instrument, **statute**, ordinance, contract or franchise **and obtain a declaration of rights**, status or other legal relations thereunder. (Emphasis added)

78-33-12. Chapter to be liberally construed.

This chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; **and is to be liberally construed and administered.**

(Emphasis added)

OTHER

(Emphasis added as briefed to the Utah Court of Appeals)

DECLARATION OF INDEPENDENCE

UNANIMOUSLY PASSED BY THE CONGRESS OF THE THIRTEEN UNITED STATES OF AMERICA, July 4, 1776

When in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another, and to assume among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature's God entitle them, a decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation.

We hold these Truths to be self-evident, that **all Men are created equal**, that they are endowed by their Creator with certain **unalienable Rights**, that among these are Life, **Liberty** and the Pursuit of Happiness - That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that **whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter** or to abolish **it**, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers

in such Form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient Causes; and accordingly all Experience hath shewn, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the Forms to which they are accustomed. **But when a long Train of Abuses and Usurpations, pursuing invariably the same Object, evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security**. Such has been the patient Sufferance of these Colonies; and such is now the Necessity which constrains them to alter their former Systems of Government. The History of the present King of Great Britain is a History of repeated Injuries and Usurpations, all having in direct Object the Establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid World....

In every stage of these Oppressions **we have Petitioned for Redress in the most humble Terms: Our repeated Petitions have been answered only by repeated Injury**. A Prince, whose Character is thus marked by every act which may define a Tyrant, is **unfit to be the ruler of a free People**....

We, therefore, the Representatives of the UNITED STATES OF AMERICA, in GENERAL CONGRESS, Assembled, **appealing to the Supreme Judge of the World** for the Rectitude of our Intentions, do, in the Name, and by Authority of the good People of these Colonies,

solemnly Publish and Declare, That these United Colonies are, and of Right ought to be FREE AND INDEPENDENT STATES; that they are absolved from all Allegiance to the British Crown, and that all political Connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as FREE AND INDEPENDENT STATES, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which INDEPENDENT STATES may of right do. And for the support of this Declaration, **with a firm Reliance on the Protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.** (Emphasis added)

UNIVERSAL DECLARATION OF HUMAN RIGHTS [1948]

Adopted by the United Nations General Assembly on 10 December 1948. U.S. has signature to this declaration. [internet address: http://www.hri.org/DOCS/UDHR48.html].

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and

obligations and of any criminal charge against him. (Emphasis added)

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 16

1. **Men and women** of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. **They are entitled to equal rights as to marriage, during marriage and at its dissolution.** (Emphasis added)

2. Marriage shall be entered into with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

STATEMENT OF CASE

Petitioner, a fit father, is being denied a close relationship with his son because the Utah statutes challenged deny him his federal constitutional parental rights. State laws need to change to recognize the

fundamental right of children and to permit their biological father to have a meaningful role in raising his children.

Petitioner disputes the first sentence of the Utah Court of Appeals decision (see Appendix, page 1); which claims that the Petitioner "urges us to strike down the entirety of Utah's divorce laws." That statement casts doubt on the entire decision. To the contrary, in his brief to the Court of Appeals, Petitioner carefully listed only the sections of Title 30 that unconstitutionally burdened his federal Parental rights to raise their children. Petitioner also disputes the court's assertion that Petitioner has engaged "oppressive litigation" (see separate Appendix, page 2). Petitioner used Utah's Declaratory Judgment statute (see page 3 herein), in reasonable effort to establish Petitioner's rights, which was the least offensive type of request, which he believed to be a necessary first step before modifying a divorce decree.

The U.S. Supreme Court has held that the U. S. Constitution allows state courts to discriminate against fathers before birth. The result is that Utah and other states fail in their constitutional guarantee to provide equal protection to fathers after birth.

Although a man and a woman make a choice to a relationship that creates human life, this Court holds that only a woman can escape the consequences of that choice.

If the mother allows the baby to live, she expects the father to support that child. Out of three (3) human lives, this Court holds that only the will of the female is

constitutionally protected. After birth, Utah courts continue to discriminate against fathers in favor of mothers. Many of societies ills are the result of children who have been deprived of their right of a close relationship with their fathers. State courts are overburdened with domestic disputes. Instead of determining if parents are fit, states like Utah treat parents as if they are all unfit. Current domestic relations statutes encourage litigation instead of attempting to preserve the marriage and parent/child relationships.

The result is, to expedite court calendars, the constitutional rights of parents to make decisions concerning their children without state interference is regularly abused and denied. Utah law gives the Court unbridled discretion, then uses an abuse of discretion standard of review for appeals, so an appeal is usually a useless act.

In *Troxel v. Granville,* 530 U.S. 57 (2000), this Court reserved for a later decision, application to domestic relations court of the principals related to parent/child relations discussed therein. The time has come to put fit parents back in charge by this Court tackling those issues by boldly striking down state domestic relation laws which trample on the constitutional rights of parents to make decisions concerning their children.

States need guidelines from this Court which will encourage them to adopt laws and procedures which protect fit parent's constitutional rights. No longer should parents, who go before a state judge in a simple ministerial capacity,

lose their fundamental right to the care, custody and control of their children.

Question one, *Troxel,* was raised in page three of the complaint to the state district court and argued throughout including to the Utah Court of Appeals. Amendments Five and Fourteen are quoted on page 68 of the record. Pages 5-30 of the separate Appendix portrays the challenged state statutes in the same manner as before the state courts. The state court dismissed the case. The Court of Appeals said that applying federal law (*Troxel*) to these statutes is frivolous. See page 3 of the Appendix.

Question two, *Shinkoskey*, is central to this case; was raised on page 62 of the record in the lower court and argued extensively in the Utah Court of Appeals. The district court dismissed the case. Although *Shinkoskey* was decided before Petitioner commenced this action, the Court of Appeals notably fails to even mention it in their discussion. In that case the court applied the old *Englert v. Englert,* 576 P.2 1274 (1978) Utah Supreme Court case instead of *Troxel*.

Both Courts refused to apply the standards in *Troxel* to divorce proceedings or to address whether *Shinkoskey* gave too much power to the judges and too little to parents and failed to address the constitutional challenges raised. State statutes challenged were listed on pages 86-89, and detailed on pages 172-184 of the record.

Question three and four (First Amendment) were raised on page 59 of the record and is quoted in full on page

67 and were also quoted and briefed to the Court of Appeals. Although the Declaration of Independence (See pages 4-5 herein) was used in both courts to aid interpretation of the right to petition for redress, neither court applied the Federal First Amendment rights. Notably the Court of Appeals fails to address this Court's *Dodge v. Graville,* 533 U.S. 945 case wherein the Arizona court's decision was vacated for failing to apply *Troxel.*

Question five was covered the same as questions one and two in the record. *Troxel* is quoted repeatedly and the state statutes challenged were listed in detail. (See Appendix pages 5-30) The district court dismissed the case. Although central to this case, the Court of Appeals evades addressing how a judge's power with "no hint of limitation"is an unconstitutional holding over a fundamental right.

Question six (religious freedom, First Amendment) was raised on pages 187, 188 of the record in the district court as well clearly briefed in the Court of Appeals. Although Petitioner was questioned at oral argument about his religious beliefs, the Court of Appeals failed to elaborate the denial of this right in its decision. The district court failed to defend the First Amendment right.

Question seven (Universal Declaration of Human Rights) are identified by number and content on pages 3 and 4 of the oral argument transcript before the district court and raised on pages 3,9,10 of the Appellant's brief in the higher court. Both courts ignored this issue.

ARGUMENT

REASONS FOR GRANTING THE WRIT

I

Certiorari Should be Granted because Utah's divorce laws are repugnant to the Constitution, in that they allow the state to unreasonably interfere with fit parents constitutional rights, privileges and liberty interest in the care, custody and control of their children.

In *Troxel,* this Court struck down a Washington grandparent vitiation statute because it unreasonably interfered with fit parent's right to make decision concerning their children without state interference. This Court expressly limited the scope of its decision with respect to visitation rights:

> **We do not**, and need not, **define today the precise scope of the parental due process right in the visitation context**. . . . Because much state-court adjudication in this context occurs on a case-by-case basis, we would be hesitant to hold that specific nonparental visitation statutes violate the Due Process Clause as a *per se* matter. [*Troxel*, P. 2064]. (Emphasis added).

In *Troxel* this Court reaffirmed a long line of decisions which recognized a fit parent's constitutional right to make decisions concerning their children without unreasonable interference by the state:

> As we have explained, the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a "better" decision could be made. [*Troxel* 2064].

This petition is far broader than the visitation issue in *Troxel.* This Petition is not limited to visitation rights. As was true with Washington's over broad grandparent visitation statute, Utah's divorce laws are also breathtakingly broad, in that they permit the Court to overrule fit parent's decisions by its almost unbridled discretion.

As shown on pages 5 through 30 in the separate Appendix, high lighted in the same manner as before the state courts, Parents have been replaced by state judges. Not because of wrongdoing, but because the judge had a simple ministerial function to perform. Instead of being limited to visitation rights, Petitioner seeks to declare all of the Utah's divorce statutes which give breathtakingly broad powers to the court, to be unconstitutional.

Parents' constitutional rights to rear their children without unreasonable state interference are ignored in Utah Law. Petitioner did not challenge these laws until the Utah

Court of Appeals decided *Shinkoskey v. Shinkoskey,* 19 P.3d 1005 [2001]) and declared that a state judge's power has "no hint of limitation".

This Court should declare those Utah's divorce laws which give the court unbridled discretion and deprive parents of their right to an effective appeal to be unconstitutional. Utah's divorce rate is appalling. More than half of the marriages end in divorce. In addition, many couples live together and raise families without being married to retain control of their children. The present system broken and should be struck down. The majority of society will be, directly or indirectly, affected by the U.S. Supreme Court deciding this case. The well-being of countless children hangs in the balance.

Utah divorce laws, which give almost unlimited power to the trial judge without being required to give deference to the decisions by fit parents, are clearly unconstitutional. For example a trial court's power to require divorcing parents to purchase dental or other insurance, where other parents are not required to do so, violates due process, equal protection and various other constitutional rights. This Court should meet the problem head on by boldly declaring those divorce laws to be unconstitutional and set some guidelines to be followed by the legislature in enacting constitutionally appropriate laws.

This is an extremely important question of state and federal law which has not been, but should be, settled by this Court. The reasoning in *Troxel* and in *State ex rel. S. A* 37 P.3d 1166 (Ut.Ct.App.2001), a "sibling at risk" case",

in which the Utah Court of Appeals cited *Troxel* and recognize the rights of fit parents to govern their children and the constitutional limitations on the state intruding into family matters, should be applied to Utah Divorce Law. In that case, the Court of Appeals decided a case using *Troxel* that it had nothing to do with grandparent visitation, yet now refuses to apply *Troxel* to other unconstitutional laws.

The Utah Court of Appeals emphasized the fact that this Court found it unnecessary to address the broader problem as to the effect of its ruling in *Troxel* on state divorce laws, and also declined to address the constitutional issues in the *Joos, supra* decision. Instead it dismissed Petitioner's arguments by labeling them as "frivolous." A better approach would be for this Court to boldly recognize parents' right to make decisions concerning their children in a divorce setting, recognize the unconstitutionality of Utah's Divorce Laws, declare them to be unconstitutional and give the legislature guidelines by which they can enact constitutional divorce laws which protect fit parents right to make decisions concerning their children without unreasonable state burdens on this fundamental right.

II

Unconstitutional "chilling effect" of imposing sanctions for declaratory judgment action to determine whether a state law is repugnant to federal law.

Petitioner challenge the Court's imposition of URCP 11 sanctions based upon its determination that his claims were "frivolous". In its 6/12/03 Memorandum Decision [App. A], without discussing the litigation, the fact that in

most instances his efforts have been rebuffed without a reasoned opinion, the Ut. Ct. App.'s concluded that Dan's good faith attempts to obtain a meaningful, reasoned decision which discusses his specific legal issues were "frivolous". Dan's litigation was not "frivolous". The Utah Courts unconstitutionally sanctioned him for "petitioning the government for redress" by declaratory judgment as to whether Federal law as stated in *Troxel,* changed Utah's Divorce Laws and for asserting his religious freedom, both First Amendment rights. The Court of Appeals provides no other forum to apply *Troxel* and challenge *Shinkoskey* and therefore violates the overbreadth doctrine of the First Amendment. Why sanction someone who is just seeking to see that U.S. citizens are being treated with the dignity and respect that they are due?

III

Utah refusal to address issues raised by Petition violate his rights under the Universal Declaration of Human Rights, which has been signed by the United States.

28 U.S.C.A. § 1257(a), pertaining to granting of writs of certiorari, reads as follows:

§ 1257. State courts; certiorari

> **(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where** the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn

> in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or **where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.** (Emphasis added).

Because the United States sponsored and is a signatory to the Universal Declaration of Human rights, it comes within the highlighted portion of the above-quoted statute and is a separate ground for granting of certiorari. This Court should declare to what extent Utah is bound thereby.